

PART III - LAND DEVELOPMENT AND GROWTH MANAGEMENT

Chapter 3-5 - PLANNING AND DEVELOPMENT

Article XXIII. Earthmoving

Staff Note: The sections highlighted in Yellow are those areas where there was no consensus opinion during the roundtable on January 8, 2014.

Section 3.5.457 Intent and Purpose.

It is the intent and purpose of this Article to regulate existing and future earthmoving operations in such a manner as to minimize any direct, indirect and cumulative impacts detrimental to wildlife and its habitat, public and private infrastructure, ground water and surface water, the public health, safety, and welfare, current and surrounding land uses, and property values as a result of such activities within the County.

Section 3.5.458 Applicability.

The provisions of this Article apply to any person in the unincorporated county presently conducting or proposing to dig, mine, scrape, excavate, or in any manner conduct an activity that moves or removes earth from its existing location and moves it to another location, whether on the same or another lot. Compliance with the requirements of this Article shall not relieve any party from complying with the requirements of any other applicable Federal, State, or local law. Where requirements of this Article differ from provisions of the Babcock Development of Regional Impact (DRI) Development Order, and subsequent Incremental Development Orders, the provisions of the DRI will supersede the requirements of this Article.

Comment [IW1]: Change made in response to public comment.

Section 3.5.459 Earthmoving Operations.

All earthmoving operations are prohibited unless one of the following conditions is met.

- A. The earthmoving operation is exempt per this Article.
- B. A Construction Permit has been approved.
- C. A Standard Earthmoving Permit has been approved.
- D. A Specific Earthmoving Permit has been approved.

Section 3.5.560 Application Requirement.

A permit shall only be applied for by the owner of the lot on which the activity will occur or an entity granted permission by the owner of the lot.

Section 3.5.461 Staff Review and Action.

County staff shall review earthmoving operations governed by this Article for consistency with the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County.

Section 3.5.462 Nonconformities.

An earthmoving operation that has been approved by the County, which has a valid permit on the effective date of this Article and which is made nonconforming by this Article, may continue to operate in accordance with the regulations under which it was approved. Any request for modification, except for a request to transfer the permit to a new permit holder, shall require the operation to come into compliance with this Article, the Comprehensive Plan, and the Land Development Regulations.

~~A. A request to transfer the permit to a new permit holder.~~

~~B. A request to renew the permit beyond the original expiration date, or the expiration date as modified by legislatively allowed extensions.~~

~~1. A request to renew a permit for a nonconforming operation may only be approved if all of the following conditions are met at the time of renewal:~~

~~a. The operation is in compliance with the standards, requirements, and conditions under which the permit was issued.~~

~~b. There are no changes to the operation.~~

~~c. All local, State, and Federal permits are valid.~~

~~2. The operation shall comply with any new fees that have been adopted prior to the renewal date.~~

Section 3.5.463 Exempt Earthmoving Operations.

A. Notification to the County for earthmoving activities association with the following operations shall not be required. This does not remove the requirement to apply for other necessary County permits, such as a right-of-way permit. ~~for the following earthmoving operations:~~

Comment [IW2]: Staff initiated change

1. Grave digging.
2. Well construction.
3. Maintenance dredging of canals and stormwater ponds. Publicly-funded maintenance dredging shall not occur within 15 feet of a seawall and 10 feet of a piling support structure.
4. Plowing, tilling and other similar soil alteration when in association with the cultivation of crops for human or animal consumption, for renewable energy manufacture, or for silviculture operations.
5. Flower gardening and landscaping when conducted on a lot containing a habitable dwelling unit. The following are limits to the amount of earth that may be placed on the lot within a five year period for gardening and landscaping purposes:
 - a. For a lot of one-half acre or less, thirty-two cubic yards.

- b. For a lot of greater than one-half acre and less than two and one-half acres, sixty-two cubic yards.
- c. For a lot of two and one-half acres or greater, ninety-two cubic yards.
6. Garden supply retailing or wholesaling. The stockpiling of loose soil, gravel, mulch, and other similar gardening materials that are accessory to the business.
7. Construction of nonresidential farm buildings.
8. Construction of public roads and associated stormwater infrastructure.
9. **Mini Farm Pond construction.** ~~An excavation with a footprint~~ that is less than or equal to three acres ~~and which will be for use~~ as a livestock watering pond, irrigation pond, or other bona fide agriculture use. The total amount of cumulative acres of excavations that may occur on contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches. ~~The size of the excavation footprint is inclusive of all other excavations on-site but exclusive of ditches.~~

Comment [IW3]: Changes in this subsection made in response to public comment

B. Exemption Verification Process. Notification to the County for earthmoving activities association with the following operation shall be required in order to confirm the exempt status of the operation. Application to the County in order to confirm the exempt status of this earthmoving operation shall be required:

1. **Small Farm Pond construction.** ~~This is An excavation with a footprint~~ that is larger than three acres but less than or equal to ~~ten~~ fifteen acres ~~and which will be~~ used as a livestock watering pond, aquaculture pond, irrigation pond, or similar bona fide agriculture use. The size of the excavation footprint is inclusive of all other excavations on-site but exclusive of ditches. The total amount of cumulative acres of excavations that may occur on contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches. These operations shall meet the following requirements:
 - a. Location
 - 1) If the lot is located in the Rural Service Area, it shall have a consistent zoning and Future Land Use Map designation that allows agriculture:
 - a) Zoned Agriculture General or Agriculture Estate with an Agriculture Future Land Use Map (FLUM) designation.
 - b) Zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.
 - c) Zoned Planned Development with a Rural Community Mixed Use FLUM designation.
 - d) Zoned Residential Estates-1 or -5 with a Rural Estate Residential FLUM designation.

Comment [IW4]: Changes in this subsection made in response to public comment.

1 2) If the lot is located in the Urban Service Area, it shall have a
2 consistent zoning and FLUM designation that allows agriculture or a
3 vested bona fide agriculture use.

4 b. All aspects of this earthmoving operation shall only occur on uplands.

5 c. No excavated material shall be placed in a floodplain.

6 bd. All excavated material shall be retained on-site; the manner in which the
7 material will be permanently disposed shall be described and, if appropriate,
8 illustrated.

9 ee. The depth of the excavation shall not exceed two feet above confining layer;
10 all operations proposing a depth below 12 feet shall comply with the soil
11 boring requirements of this Article.

12 ef. The minimum setback from top of bank to any lot line, easement, and
13 structure shall be 10 feet.

15 **Section 3.5.464 Operation Standards.**

16 **A. General Earthmoving Operation Standards.**

17 The following general standards of operation apply to all earthmoving operations:

18 1. Hours of Operation

19 a. In the Rural Service Area and in the Urban Service Area of the Babcock DRI,
20 an earthmoving operation located within two miles of a dwelling unit in
21 existence at the time of permitting, shall only conduct operations between
22 the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between
23 the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless otherwise
24 approved by a Hearing Examiner through the Earthmoving Permit Variance
25 procedure. If there is no dwelling unit within two miles, the hours of
26 operation are not restricted.

27 b. In the Urban Service Area, but not including the Urban Service Area of the
28 Babcock DRI, an earthmoving operation shall only conduct operations
29 between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and
30 between the hours of 7:00 a.m. and 12:00 p.m. on Saturday.

31 2. An earthmoving operation shall not have an adverse impact on the quality or
32 quantity of groundwater or surface water of surrounding or downstream properties.

33 3. An earthmoving operation shall not impede or destroy historic flowways. All historic
34 flowways on the earthmoving operation site shall be protected and, if necessary due
35 to degradation, restored.

36 4. An earthmoving operation shall not have an adverse impact on the 100-year
37 floodplain.

38 5. An earthmoving operation shall not impact off-site drainage.

1 6. An earthmoving operation shall not have an adverse impact on environmentally
2 sensitive habitat or any listed species either on-site or off-site.

3 7. An earthmoving operation shall protect wetlands and other surface waterbodies.

4 a. There shall be a minimum setback of 50 feet, vegetated with native species,
5 from any activity associated with an earthmoving operation to:

6 1) Any on-site wetland, unless mitigation for its destruction is approved,
7 and any on-site waterbody that is not integral to the earthmoving
8 operationexcavation activity.

9 2) Any off-site wetlands or waterbodies.

10 b. No activity other than the removal of exotic invasive species shall take place
11 within this setback. Depending on the duration and intensity of the activity,
12 plantings of native vegetation may be required within the buffer.

13 c. Sediment barriers, fencing, and signage, as necessary depending on the
14 activity, shall be placed along the outside edge of the 50 foot setback as
15 protection.

16 ~~8. An earthmoving operation shall minimize wind erosion of exposed soils ~~be operated~~
17 ~~in such a manner that airborne debris emissions are minimized~~.~~

18 a. Best Management Practices to reduce wind erosion shall be used.

19 b. All areas of one acre or greater that will result in exposure of denuded soil
20 during the months of November through March shall employ dust and other
21 airborne debris control procedures.

22 c. All areas of one acre or greater, except roads and other surfaces designed for
23 vehicular circulation, which will be subject to erosion for a period longer than
24 twelve months prior to the establishment of finished grade, agricultural
25 crops, or permanent perennial vegetative cover shall be stabilized 30 days
26 after creation.

27 d. Unpaved roads and other surfaces designed for vehicular circulation shall be
28 treated during dry periods to reduce dust and other airborne debris
29 emissions.

30 e. Stockpiles shall not be higher than 50 feet and shall be treated as necessary
31 to reduce dust and other airborne debris emissions.

32 ~~9. An earthmoving operation shall control water erosion and the effects of water~~
33 ~~erosion.~~

34 a. Best Management Practices to reduce water erosion and the effects of water
35 erosion shall be used.

36 b. All slopes shall be stabilized. Stabilization may be done with a perennial
37 grass cover and with native plants appropriate to the conditions of the site.
38 Grass and native plant cover shall be required to extend down to the

Comment [IW5]: Further review of the existing LDRs prompted revisions to this subsection. Language from erosion control section of Code of Laws and Ordinance included into this code.

Comment [IW6]: Further review of the existing LDRs prompted revisions to this subsection.

seasonal high groundwater line only.

1) Stabilization of excavation or fill operations is required to be completed when the final shaping of the slopes is done.

2) Stabilization of stockpiles is required if the stockpile will be in place for longer than six months.

3) Stabilization of other slopes is required upon completion of the project.

b. All development sites shall be bordered by sediment barriers in order to filter any water leaving the site.

c. The toe of all exposed slopes not interior to an excavation operation shall be bordered by sediment barriers.

d. Barriers shall be placed and maintained such that drainage will not overflow or bypass the barrier. The effectiveness of the filtration shall be maintained by regular clearing of captured sediments or by refurbishment, as necessary. Captured sediments are to be disposed of on upland portions of the development site.

e. Barriers shall remain in place until the slope is leveled or the site is permanently stabilized.

10. An earthmoving operation shall protect native topsoils to the greatest extent practicable. Any site which is identified by the Natural Resource Conservation Service as devoid of native topsoils shall be exempt from this requirement. Specific Major Earthmoving operations Ag Excavations and Commercial Excavations are exempt from this requirement.

a. The topsoil that occurs on a lot prior to development shall be retained or stockpiled throughout the development of the lot such that it will not be lost during the removal of earth or placement of fill.

b. Following fill placement and prior to landscaping, stockpiled topsoils shall be redistributed over the exposed portions of the site.

~~10. An earthmoving operation shall stabilize stockpiles such that there is no migration of materials or particulate matter beyond the site. Stockpiles shall not be higher than 50 feet.~~

Comment [IW7]: This was combined into 8 above.

11. An earthmoving operation shall protect drainage easements.

a. Existing front and side swales shall not be filled or obstructed in any way, and the adjacent lot's drainage shall be maintained. Easements may be altered with agreement of the easement holder.

b. Vehicles and equipment shall not be moved onto any site unless it is over an acceptably constructed and approved crossover.

1 c. Earthmoving operations requiring access across county rights-of-way shall
2 install a temporary pipe in the right-of-way as required by the County
3 Engineer. Temporary pipe must remain in place until permanent pipe is
4 placed, if required, or the operation is completed.

5 12. An earthmoving operation will require permits in accordance with Charlotte County
6 law and applicable Federal and State law for any burning or incineration.

7 13. An earthmoving operation site shall be safely secured against trespass. Depending
8 on the duration of the activity, the intensity of the activity and adjacent uses, a fence
9 or other similar means of securing the site may be required.

10 14. Depending on the duration of the activity, the intensity of the activity and adjacent
11 uses, an earthmoving operation site may be required to be aesthetically enhanced
12 with landscaped screening buffers or landscaped earthen berms.

13 15. Noise generated at an earthmoving operation site shall not exceed 65 decibels when
14 measured at the nearest dwelling unit or institutional use to the operation site.
15 Generators and pumps used during an earthmoving operation shall be well muffled.

16 **~~B. Critical Area Stabilization.~~**

17 ~~The following additional standards apply to highly erodible or critically eroding areas~~
18 ~~including, but not limited to, dams, dikes, levees, cuts, ditches and other artificial~~
19 ~~watercourses, fill and spoil piles, and denuded gullied sites. These shall be stabilized to~~
20 ~~conserve topsoil and prevent sedimentation of surface waters.~~

21 ~~1. All graded areas of one acre or greater that will be subject to erosion by wind~~
22 ~~or water for a period longer than twelve months prior to the establishment~~
23 ~~of finished grade, agricultural crops, or permanent perennial vegetative~~
24 ~~cover shall be stabilized. Unpaved roads and other surfaces designed for~~
25 ~~vehicular circulation are exempt from this requirement.~~

26 ~~2. All slopes of four horizontal to one vertical or steeper shall be sodded or~~
27 ~~otherwise stabilized in accordance with guidelines of the Natural Resource~~
28 ~~Conservation Service. In the event that the slope is a temporary result of~~
29 ~~earthmoving activities associated with development of a site and said slope~~
30 ~~will be modified during the length of the permit, stabilization shall not be~~
31 ~~required.~~

32 ~~3. All swales and other manmade, nonstructural drainage conveyances shall be~~
33 ~~stabilized with perennial grass cover; application may be through sodding,~~
34 ~~hydroseeding, or other methods which achieve stabilization and are~~
35 ~~approved by the County. In the event that the bottom of the conveyance is~~
36 ~~below seasonal high groundwater levels, grass cover shall be required to~~
37 ~~extend down to the seasonal high groundwater line only.~~

38 **C. Excavation Specific Operation Standards.**

Comment [IW8]: This was combined with 8 And 9 above.

1 The following additional standards apply to excavation operations.

- 2 1. The maximum depth of any excavation is two feet above the confining layer.
- 3 2. The finished slope of any excavation bank shall meet or exceed four horizontal to
4 one vertical~~not be steeper than 4 to 1~~. For agricultural excavations this slope is
5 measured from top of bank to a depth no less than two feet below the mean water
6 table and for all other excavations this slope is measured from top of bank to a
7 depth no less than five feet below the mean water table.
- 8 3. In order for stormwater to be discharged into an excavation, a Stormwater Plan
9 must be approved by the County or applicable water management district.
- 10 4. No solid or liquid waste shall be placed in an excavation except for clean debris in
11 accordance with Subsection 3.5.466 A6.
- 12 5. Dewatering operations shall provide minimum drawdown of the groundwater table
13 outside the excavation ~~site, and any excavation dewatering operations~~ that results
14 in detrimental fluctuations of water levels in adjacent water bodies, wetland areas
15 or water supply wells shall be terminated until such time as a satisfactory plan is
16 developed and implemented to maintain water levels in such areas.
- 17 6. Blasting, drilling or hammering to fracture a rock surface, and similar activities, shall
18 be limited to the hours between 9 a.m. and 4 p.m. Monday to Friday and 9 a.m. and
19 12 p.m. Saturday if conducted within one mile of any habitable dwelling unit or
20 institutional use, unless otherwise approved. Trees and other buffering
21 techniques may be required to mitigate noise impacts.
- 22 7. The permit holder shall provide traffic safety improvements such as signing, striping,
23 barrier rails, turn and/or acceleration lanes with tapers, all meeting American
24 Association of State Highway and Transportation Officials' Standards and which shall
25 comply with the Manual of Uniform Traffic Control Devices, as required by the
26 County Engineer.
- 27 8. Haul routes:
 - 28 a. To the greatest extent possible, internal haul routes shall not be located
29 within 250 feet of the lot boundary of the site, except at the lot exit and
30 entry point.
 - 31 b. An apron is required at the terminus of the internal haul route where it
32 intersects the external haul route. Aprons shall be built to the specifications
33 of the County Engineer.
 - 34 c. The use of haul routes shall not have undue impact on persons and
35 properties along or in proximity to a haul route. An undue impact would be
36 an increase in airborne debris beyond what is normally experienced without
37 the earthmoving truck traffic, increased noise during the evening and night

Comment [IW9]: Revised in response to public comments.

hours from truck traffic, or trucks that exceed speed limits or are otherwise determined to be operating in contradiction of the law.

Comment [IW10]: Revised in response to public comments.

- d. It shall be the responsibility of the permit holder to mitigate impacts arising from the use of haul routes. Required mitigation measures may include any or all of the following:
- 1) Watering and other dust control measures.
 - 2) Cleanup of material overspills.
 - 3) Maintenance grading of unpaved roads, shoulder grading and restoration.
 - 4) Pavement maintenance, including resurfacing, reconstruction, and patching.
 - 5) Safety improvements such as striping barrier rails, turn and acceleration lanes.
- e. If a privately maintained right-of-way is used to gain access to an operation site, the applicant shall supply an affidavit indicating that they have legal use of that right-of-way for a haul route.

~~D. Filling, Grading, Stockpiling Specific Operation Standards.~~

Comment [IW11]: This was combined into B 8 and 9 above.

~~The following additional standards apply to filling, grading, or stockpiling operations.~~

- ~~1. All drainage leaving development sites shall be filtered by sediment barriers. It shall be the responsibility of the developer to maintain the effectiveness of filtration by regular clearing of captured sediments or by refurbishment, as necessary. Captured sediments are to be disposed of on upland portions of the development site.~~
- ~~2. Best Management Practices shall be used to barricade the toe of all exposed slopes which meet or exceed four horizontal to one vertical. These shall be placed and maintained such that drainage will not overflow or bypass the barrier and shall remain in place until the slope is leveled or permanently stabilized.~~
- ~~3. All graded areas of one acre or greater which will result in exposure of denuded soil during the months of November through March shall employ dust control procedures consistent with the guidelines of the Natural Resource Conservation Service or the FDEP Florida Development Manual.~~

Section 3.5.465 Standard Earthmoving and Construction Permits.

The following activities shall require County review and approval prior to the commencement of any earthmoving activity; review and approval by the Earthmoving Administrator is not required. No earthmoving activity shall occur on-site prior to the approval of the permit. A maximum of 10 percent or 15,000 cubic yards, whichever is greater, of the total amount of cubic yards to be excavated may be removed from a development site approved under a Standard Earthmoving or Construction Permit. [For a Development of Regional Impact (DRI), the development site shall mean any of the area within

the DRI boundary.] Stockpiling is considered an accessory to these earthmoving activities but shall only be allowed for material used on the development site and cease when there is no longer a valid permit for the site.

A. Standard Earthmoving Permits.

The following activities require a Standard Earthmoving Permit.

1. Site preparation Earthmoving activities for subdivisions, multi-family, commercial, and industrial site development which includes approval of earthmoving activities that occur prior to approval of a construction permit or final plat, such as site grading, stormwater and other utility installation, and road construction. This review process will occur simultaneous with the Site Plan Review process and the approved Standard Earthmoving Permit will be given to the applicant when the project receives Final Site Plan approval. Earthmoving in association with construction of a building on the development site may be otherwise reviewed and approved through the Construction Permit process.
2. Earthmoving activities associated with the creation of residential ponds. This activity shall meet the following requirements:
 - a. The lot shall contain a habitable dwelling unit on land zoned for residential use.
 - b. The following design requirements are adhered to:
 - 1) The maximum excavation footprint shall be equal to or less than ten percent of the lot or one acre, whichever is less, inclusive of all excavations on-site.
 - 2) The depth shall not exceed 12 feet.
 - 3) There shall be a minimum setback of 25 feet from top of bank to any lot line, easement, and structure.
3. Earthmoving activities associated with the creation of tracks and trails used by off-road vehicles, motorbikes, bicycles and other similar apparatuses.
4. Earthmoving activities associated with the repair, replacement or expansion of septic tanks and drain fields.
5. Raising the elevation of a portion of a lot. This shall ~~only be approved if the lot contains a habitable dwelling unit, and, if~~ the maximum height that can be reached through this type of filling is one foot above natural grade.
6. Earthmoving activities associated with development of active and passive parks, such as playgrounds, ball courts and fields, trails, and associated parking.
7. Stockpiling of dredge spoils. Dredge spoil may be stored on vacant or developed residential, commercial, or industrial lots only if the following requirements are met:
 - a. The storage occurs no longer than one year.
 - b. The spoil pile is at least 20 feet from any buildings.

- c. The spoil pile is stabilized and ~~dust control~~ measures are used to reduce the migration of ~~dust and other particulate matter~~ airborne debris.
- d. There shall be no removal of or harm to native plant or animal species, except grasses, to accommodate the storage. A listed species survey, for flora and fauna, and identification of the FLUCCS category of the proposed spoil site are required to satisfy this requirement.
- e. The areas used for stockpiling shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved Construction Permit that the site will be developed with a legal use after the stockpile has been removed. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder shall be seeded with native grasses or other native plants.

B. Construction Permits.

~~This subsection is applicable to activities that are not listed in subsection A above. The following individual activities will not require a separate application for an earthmoving permit, but will be permitted in accordance with otherwise applicable County regulations: for the installation of irrigation pipe, commercial landscaping, slabs, driveways, seawall construction, construction or destruction of pools and buildings including standard building permits, tree removal and such other similar development activities shall be conducted as usual through the applicable County department and the applicants for these permits are exempt from obtaining a separate permit for earthmoving associated with these activities. However, the earthmoving standards shall continue to apply to these activities.~~ Activities that are first reviewed through Site Plan Review should have obtained a Standard Earthmoving Permit for much of the site preparation earthmoving associated with that activity, such as the installation of utilities, roads, and stormwater infrastructure.

Comment [IW12]: Revised in response to public comments

Section 3.5.466 Specific Earthmoving Permits.

The following categories consist of activities that require review and approval by the Earthmoving Administrator. ~~These activities require a Specific Minor or Specific Major Earthmoving Permit.~~ No earthmoving activity shall occur on-site prior to the approval of a permit.

A. Specific Minor Earthmoving Operations.

~~1. Minor Excavation for Agricultural Purposes (Ag Minor Excavation).~~

~~This is for an excavation greater than 10 acres and less than or equal to 20 acres to be used as a livestock watering pond, aquaculture pond, irrigation pond, or similar bona fide agriculture use. The size of the excavation footprint is inclusive of all other excavations on-site but exclusive of ditches. The following requirements apply:~~

Comment [IW13]: This section was modified to remove the Specific Minor and Specific Major categories in response to the revision of the application process section that removed the Hearing Examiner from final approvals of the major excavations. Since all applications are now approved by the Earthmoving Administrator, the two categories are no longer needed.

Comment [IW14]: This was removed due to the changes in the sizes of the exempt ag ponds. It is no longer necessary.

a. ~~If the lot is located in the Rural Service Area, it shall have a consistent zoning and Future Land Use Map designation that allows agriculture:~~

1) ~~Zoned Agriculture General or Agriculture Estate with an Agriculture FLUM designation.~~

2) ~~Zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.~~

3) ~~Zoned Planned Development with a Rural Community Mixed Use FLUM designation.~~

4) ~~Zoned Residential Estates 1 or 5 with a Rural Estate Residential FLUM designation.~~

b. ~~If the lot is located in the Urban Service Area, it shall have a consistent zoning and FLUM designation that allows agriculture or a vested bona fide agriculture use.~~

c. ~~All excavated material shall be retained on site.~~

d. ~~There shall be a minimum setback of 50 feet from top of bank to any lot line, easement and structure.~~

A.2. Minor Excavation for Reconfiguration of a Lake (Lake Minor Excavation/Reconfiguration).

This is for changing the configuration of an existing lake, increasing the size, or increasing the depth more than would occur with a maintenance dredge. ~~The Administrator may require this item to undergo review as a Specific Major Earthmoving operation if the Administrator determines that the impacts of the operation could impact the health, safety or welfare of the public or the environment.~~ The following requirements apply:

a1. The maximum amount of excavated material that may be removed from the site is 10 percent or 15,000 cubic yards of the total amount of cubic yards to be excavated.

b2. There shall be a minimum setback of 50 feet from top of bank to any lot line, easement, and structure.

B3. ~~Minor Excavation for a~~ New Canal or Increasing the Width of a Canal (Canal Minor Excavation).

This is for increasing the top width of an existing canal or dredging a new canal. The following requirements apply:

a1. The maximum amount of excavated material that may be removed from a new canal site is 10 percent or 15,000 cubic yards of the total amount of cubic yards to be excavated.

b2. A canal top-of-bank may extend to the limits of the easement, right-of-way, or to adjacent lot lines.

C4. Raising Lot Elevation (RLE).

This is for increasing the elevation of a portion of a lot by more than one foot above natural grade; this includes aggregated height of any previous filling operations. The following requirements apply:

a1. The lot shall contain a habitable dwelling unit on land zoned for residential use.

- b2. The maximum amount of fill that can be placed on a lot of five acres or less is 130 cubic yards and of greater than five acres is 260 cubic yards.
- e3. Stockpiles shall be located a minimum of 50 feet from any lot line or easement.
- e4. All areas shall be seeded, sodded, or planted with native vegetation or other landscaping immediately after grading is complete.

D5. Stockpiling Fill (Stockpiling).

This is for the purpose of stockpiling excavated material ~~from an excavation~~ on a lot which is not otherwise permitted for an earthmoving operation or construction operation.

- a. Stockpiling as a principal use of land shall only occur on a lot zoned IL with a Low Intensity Industrial FLUM designation, zoned IG with a Heavy Industrial FLUM designation, zoned EM with a Mineral Resource Extraction FLUM designation, or zoned AG/AE with an Agriculture FLUM designation.
- b2. A stockpile shall not be located within 50 feet of a lot line or easement, 200 feet of a habitable dwelling unit or institutional use, and 50 feet of an agricultural or industrial structure.
- e3. All areas used for stockpiling shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved construction permit that the site will be developed with a legal use after the stockpile has been removed; if in agriculture land use a site visit to confirm use for a bona fide agriculture use subsequent to the stockpiling activity will suffice. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder shall be seeded with native grasses or other native plants.

~~E~~. Filling of an Excavation (Clean Fill).

This is for the purpose of filling in an excavated area. The following requirements apply:

- a1. Only clean debris as defined in 62-701.200 F.A.C., as may be amended, and clean gravel, sand, rock, and clay may be placed within an excavation.
- b2. Clean debris shall only be placed to within 10 feet of the proposed finished elevation of the site. The remaining 10 feet to the proposed finished elevation shall be filled with soil.
- e3. The type, tonnage and origin of the clean debris shall be reported on a quarterly basis to the Administrator.
- e4. All filled areas shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved construction permit that the site will be developed with a legal use after the filling has been completed. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder may be seeded with native grasses or other native plants.

~~B. Specific Major Earthmoving Operations.~~

~~1F. Major Excavation for Agricultural Purposes (FARMS-Ag Excavation).~~

This is an excavation with a footprint that ~~that~~ is greater than 20-15 acres, ~~inclusive of all other excavations on-site but exclusive of ditches, that~~ and which will be used for surface water storage for a bona fide agriculture use. The following requirements apply:

~~a1.~~ The lot shall be located in the Rural Service Area and:

~~a.1)~~ Zoned Agriculture General or Agriculture Estate with an Agriculture FLUM designation.

~~b.2)~~ Zoned Planned Development with a Rural Community Mixed Use FLUM designation.

~~b2.~~ The site shall be approved by or be undergoing approval by a State or Federal agency involved in cost sharing expenses for the earthmoving activity. For example, review by the Southwest Florida Water Management District under the Facilitating Agricultural Resource Management Systems program. An approved application is required from the appropriate agency prior to the County application being approved.

~~c3.~~ Excavated material shall be retained on-site.

~~d4.~~ The following design requirements shall be adhered to:

~~a.1)~~ The maximum excavation footprint and the maximum cumulative acres of, ~~including all other excavations on-site, but~~ excluding ditches, is 10 percent of the total acreage of crops to be irrigated.

~~b.2)~~ There shall be a minimum setback of 25 feet from top of bank to any lot line not abutting non-residential zoning district, 1,000 feet to any lot line abutting residential zoning district, and 1,000 feet to any habitable dwelling unit or institutional structure unless the occupants and owners, if not the same, of the affected structures consent to a reduced setback.

~~2G. Major Excavation for Commercial Purposes (Commercial Excavation).~~

This is an excavation that will be supplying material for construction sites, such as for roadbeds or building pads. The following requirements apply:

~~a1.~~ The lot shall be located in the Rural Service Area and zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.

~~b2.~~ There shall be a minimum setback of 25 feet from top-of-bank to any lot line not abutting non-residential zoning district, 1,000 feet to any lot line abutting residential zoning district, and 1,000 feet to any habitable dwelling unit or institutional structure unless the occupants and owners, if not the same, of the affected structures consent to a reduced setback.

~~c3.~~ Uses that are considered accessory to a commercial excavation are asphalt and concrete plants. These uses must be requested and identified within the

Comment [IW15]: This requires further Board discussion

1 earthmoving application and may only exist for the duration of the earthmoving
2 permit.

- 3 4. ~~a. Vegetative reclamation of a commercial excavation site requires the following:~~
4 ~~A depiction showing~~

Comment [IW16]: This subsection was moved
from Section 3.5.468 F.

- 5 ~~a. a~~At least 40 percent of the littoral zone of the reclaimed shoreline of the
6 excavated area ~~shall be~~ planted with aquatic vegetation. An additional 15
7 percent of the reclaimed shoreline shall be ~~shown~~ shaped into a littoral shelf
8 extending no less than 15 feet into the excavated area and designed to have
9 less than 24 to 20 inches of water during normal water level periods. The
10 littoral zone and shelf shall be planted with a mixture of native emergent,
11 floating, and submerged plant species of at least three different species. At
12 installation, the plants shall cover at least 85 percent of the areas designated
13 for planting. ~~The reclamation plans shall detail the type and amount of~~
14 ~~plantings.~~
15 b. ~~A depiction of a~~ An upland planting area ~~that~~ is required along the reclaimed
16 perimeter of the excavation footprint. ~~The reclamation plans shall detail the~~
17 ~~type and amount of plantings.~~ The upland planting area shall utilize the
18 following standards:

- 19 1) Required plant units per 100 feet of the perimeter of the excavated
20 area shall be 3 canopy trees, 1 accent/understory tree and 5 shrubs.
21 2) The upland planting area shall be a minimum width of 20 feet.
22 3) Canopy trees for use within the buffer include:
23 Bald Cypress Taxodium distichum
24 Gumbo Limbo Bursera simaruba
25 Laurel Oak Quercus laurifolia
26 Live Oak Quercus virginiana
27 Sabal Palm Sabal palmetto
28 Sea Grape Coccoloba uvifera
29 Southern Slash Pine Pinus elliottii var. densa
30 4) Understory trees for use within the buffer include:
31 Florida Privet Forestiera segregate
32 Red Cedar Juniperus virginiana
33 Silver Buttonwood Conocarpus erectus var. sericeus
34 Simpson's Stopper Myrcianthes fragrans
35 Stoppers Eugenia spp. (natives only)
36 Wax Myrtle Myrica cerifera
37 Wild Coffee Psychotria undata
38 5) Shrubs for use within the buffer include:

Beautyberry	Callicarpa americana
Eastern Gammagrass	Tripsacum dactyloides
Fakahatchee Grass	Tripsacum dactyloides
Firebush	Hamelia patens
Firecracker Plant	Russelia equisetiformis
Florida Privet	Forestiera segregate
Saw Palmetto	Serenoa repens
Simpson's Stoppers	Myrcianthes fragrans
Wax Myrtle	Myrica cerifera and cvs.

- 6) In no case shall there be a separation of greater than 50 feet between trees.
- 7) Other indigenous species may be approved by the County for use in the upland planting area.
- 8) Clustering of vegetation may be allowed on a case-by-case basis.
- 9) All planted material shall be Florida #1 grade according to Florida Department of Agriculture and Consumer Services, Grades and Standards; trees shall be minimum three-gallon size; shrubs shall be minimum one (1) gallon size, and minimum height of ~~eighteen~~ (18) inches.

Section 3.5.467 Earthmoving Operations not Identified by this Article.

Any operation not identified in this Article shall be reviewed on a case-by-case basis by the Administrator and will be assigned to an appropriate category.

Section 3.5.468 Specific Earthmoving Permit Application Requirements.

A. Information Required in an Application.

An application for a Specific ~~Minor or Specific Major~~ Earthmoving Permit shall include, at a minimum, the items checked below. The application shall be deemed complete if all of the checked information is included in the application. Other information may be required by the Administrator upon sufficiency review of the application. The County will accept the same application information that an applicant submits to a State or Federal agency, or an approved permit, if the applicant chooses to use that information to prove that the operation will meet the standards and requirements of this Article.

Comment [IW17]: With the removal of the Hearing Examiner as approver, there is no longer a need for two sub-categories.

Information Required in Application	Lake Reconfiguration	Canal Excavation	RLE	Stockpiling	Clean Fill	Ag Excavation	Commercial Excavation
Completed application form	✓	✓	✓	✓	✓	✓	✓
Monetary payment	✓	✓	✓	✓	✓	✓	✓
Deed or other proof of ownership	✓	✓	✓	✓	✓	✓	✓
Application affidavits	✓	✓	✓	✓	✓	✓	✓

Information Required in Application	Lake Reconfiguration	Canal Excavation	RLE	Stockpiling	Clean Fill	Ag Excavation	Commercial Excavation
Location Map	✓	✓	✓	✓	✓	✓	✓
Legal description & boundary survey of project site	✓	✓	✓	✓	✓	✓	✓
Haul route affidavit	Required if using privately maintained right-of-way, Section 3.5.464, C., 8., e.						
Project narrative	✓	✓	✓	✓	✓	✓	✓
Variance request	Required if a variance to standards is being requested, Section 3.5.474						
Excavation plans	✓	✓	None	None	None	✓	✓
Site plans	None	✓	✓	✓	✓	None	None
Soil boring report	Required if depth is greater than 12 feet, Section 3.5.468D		None	None	None	Required if depth is greater than 12 feet, Section 3.5.468D	
Reclamation plans	✓	✓	✓	✓	✓	✓	✓
Environmental surveys	✓	✓	✓	✓	None	✓	✓
Environmental impact statement	None	None	None	None	None	✓	✓
Hazardous material assessment	✓	✓	None	None	None	✓	✓
Traffic Impact Analysis	✓	✓	None	✓	✓	✓	✓
Stormwater Plan	As required by Section 3.5.464, C3						
Statement regarding blasting and, if necessary, Fire Marshall Blasting Permit	✓	✓	None	None	✓	✓	✓
Statement regarding rock crushing	✓	✓	None	None	✓	✓	✓
Statement regarding cement crushing	None	None	None	None	✓	None	None

1

Information Required in Application	Specific Minor Earthmoving	Specific Major Earthmoving
Completed application form	✓	✓
Monetary payment	✓	✓
Application Affidavits	✓	✓
Deed or other Proof of Ownership	✓	✓
Location Map	✓	✓
Legal description and boundary survey of the project site	✓	✓
Haul Route Affidavit	✓	✓
Project Narrative	✓	✓
Variance Request	Required if a variance is being requested Section 3.5.476	
Excavation Plans	Required for Ag Minor, Lake Minor, and Canal Minor Excavations	✓
Soil Boring Report	As required by Section 3.5.468D	
Site Plans	Required for RLE, Stockpiling, and Clean Fill	None

Information Required in Application	Specific Minor Earthmoving	Specific Major Earthmoving
Reclamation Plans	Lake Minor and Canal Minor	✓
Reclamation Narrative	Lake Minor and Canal Minor	✓
Environmental Surveys	✓	✓
Environmental Impact Statement	None	✓
Tree Survey and Impact Statement	Required for all except Clean Fill	✓
Hazardous Material Assessment	✓	None
Traffic Impact Analysis	✓	✓
Landscape Plan	As required by: Section 3.5.464, A7b, A14, B1, and B3 Section 3.5.466, A4d, A5c, and A6d	
Stormwater Plan	As required by Section 3.5.464, C3	
Blasting Plan and Fire Marshall Blasting Permit or statement indicating no blasting will occur	Ag Minor, Lake Minor, and Canal Minor	✓
Rock Crushing Plan or statement indicating no rock crushing will occur	Ag Minor, Lake Minor, and Canal Minor	✓
Cement Crushing Plan or statement indicating no cement, or other clean debris, crushing will occur	Clean Fill	None
Copies State and Federal permits or exemption letter	✓	✓

B. Project Narrative.

A project narrative shall include the following information:

1. Description of all activity that will take place on-site.
2. Type and amount of material to be moved, removed, or stored.
3. Probable schedule.
4. Who maintains ownership of the site and operation; who is the responsible party for the operation.
5. Proposed legal measures to provide for perpetual maintenance of any common or dedicated open space, easements, dedications and reservations.
6. ~~Dust~~ Erosion control measures.
7. Noise control measures.
8. Description of how the site will be secured.

C. Excavation Plans.

1. Excavation plans are for excavation operations and shall include the following information:

- a. Ownership and boundary lines, including bearings and distances superimposed over an aerial photo. Out-parcels within the site shall be clearly indicated along with access to these outparcels.
 - b. Size, shape, depth and location of the proposed excavation, including recharge trenches and settling ponds.
 - c. Locations of all proposed spoil piles and stockpiles of excavated material.
 - d. Within the site and within one-half mile of the site identify right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns. Provide the distance from the site and the excavation footprint to these features.
 - e. Show access roads into the site. Internal haul routes shall be identified along with roadway specifications, drainage requirements and signage locations and type. Identify maintenance measures.
 - f. If material is to be hauled off-site, identify all possible external haul routes within a one mile radius and whether these routes are publicly or privately maintained. Show clear line of site distances at entranceway from internal haul route to external haul route. Show what improvements are necessary to haul routes.
 - g. Topographic survey showing existing and proposed grades related to NGVD.
 - h. Proposed slopes during excavation, include a cross-sectional drawings referring to NGVD showing the proposed depth(s) of excavation, slope of the side and depth of water.
 - i. Detailed erosion control methods.
2. Excavation plans shall include the following if required by proposed excavation conditions:
- a. Phases of the excavation.
 - b. Location and preservation plan for all wetlands, waterbodies, and other habitats ~~to be preserved~~, including setbacks, ~~and buffers~~ exotic species removal, and any re-vegetation requirements.
 - c. Location, preservation and restoration plan for any historic flowways.
 - d. Soil borings locations shown in the soil boring report.
 - e. Proposed method of de-watering and use of settling ponds.
 - f. Location of all staff gauges.
 - g. Location of rock crushing, asphalt plant or concrete plant operations.
 - h. Location and configuration of any vegetative noise buffers or landscape screening buffers and earthen berms.

Comment [IW18]: This incorporates landscaping requirements.

D. Site Plans

Site plans are for non-excavation operations and shall include, but not be limited to:

1. Ownership and boundary lines, including bearings and distances.
2. Location of haul routes or access roads.
3. Adjoining and internal right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; all manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns.
4. Topographical elevations of the site.
5. Proposed elevations, if applicable.
6. Location of stockpiles, if applicable.
7. Detailed erosion control methods.
8. Location and preservation plan for all wetlands, waterbodies, and other habitats, including setbacks, exotic species removal, and any re-vegetation requirements.
9. Location and configuration of any vegetative noise buffers or landscape screening buffers and earthen berms.
10. Location of cement crushing or other operations proposing to alter clean debris.

Comment [IW19]: This used to be E. under this Section

E. Soil Boring Report

Soil borings are required when a proposed excavation depth is greater than 12 feet.

1. There shall be one boring per 10 acres, there shall be a minimum of two borings per excavation footprint. ~~Additional borings shall occur at every one foot of elevation change within each excavation cell or area.~~ Locations of the test borings are based upon site specific conditions. ~~If wetlands exist on site, a minimum of two borings per wetland are required, with one located at the edge of the wetland and the second a distance of 25 feet away.~~
2. Soil borings shall extend ~~to either the bottom of the confining zone of the proposed mine aquifer or ten five~~ feet deeper than the proposed depth of the ~~mine cell or area excavation, or to the top of the confining layer whichever is greater.~~
3. ~~All borings results shall provide an explanation of the nature and depth of the overburden, the likely yield of extractive material, the complete chemical characteristics of water in each water bearing strata to be penetrated, groundwater levels, and a map contouring the first confining layer below the depth of excavation and thickness of the layer within the project site as well as the thickness and contouring of all intermediate confining layers between the land surface and depth of excavation.~~
4. Copies of results shall be signed and sealed by an engineer or geologist.
5. ~~All test boring holes shall be plugged from bottom to top with cement once application evaluation is complete.~~

Comment [IW20]: Revised in response to public comment.

Comment [IW21]: Revised in response to public comment.

Comment [IW22]: Staff initiated revision

Comment [IW23]: Staff initiated revision

E. Site Plans

Site plans shall include, but not be limited to:

1. Ownership and boundary lines, including bearings and distances.
2. Location of haul routes or access roads.
3. Adjoining and internal right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; all manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns.
4. Topographical elevations of the site.
5. Proposed elevations, if applicable.
6. Location of stockpiles, if applicable.
7. Detailed erosion control methods.

Comment [IW24]: Moved up to D. under this section

F. Reclamation Plans.

1. Reclamation plans for RLE and Stockpiling operations shall include the following, but not be limited to:
 - a. A description of the manner in which restructuring and, reshaping and re-vegetation will be accomplished and a depiction of the re-vegetation of the site. List the types and amounts of each species used for re-vegetation.
 - b. A description of how the site will be maintained at least five years after the reclamation is complete.
 - c. A depiction of at least two typical cross sections each, with elevations, generally oriented north to south and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water elevations and final grades shall also be shown.
 - d. A depiction of what natural and manmade features will exist when the reclamation is complete. This requirement includes the depiction location of mitigation or preservation areas established for wildlife species, required fences, walls, vegetative buffers and littoral zones and other structures that will be on the property.
 2. Reclamation plans for all other operations shall meet the requirements listed in F.1. above and will also require a depiction of at least two typical cross-sections each, with elevations, generally oriented north to south and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water elevations and final grades shall also be shown.
- For Commercial Excavations the following vegetative reclamation features are also required:
- a. At least 40 percent of the littoral zone of the reclaimed shoreline of the excavated area shall be planted with aquatic vegetation. An additional 15

Comment [IW25]: Moved to Section 3.5.466 G 4

percent of the reclaimed shoreline shall be shaped into a littoral shelf extending no less than 15 feet into the excavated area and designed to have less than 24 to 20 inches of water during normal water level periods. The littoral zone and shelf shall be planted with a mixture of native emergent, floating, and submerged plant species of at least three different species. At installation, the plants shall cover at least 85 percent of the areas designated for planting. The type and amount of plantings shall be depicted on the reclamation plans.

b. Upland plantings are required along the reclaimed perimeter of the excavation footprint. The type and amount of plantings shall be depicted on the reclamation plans. The upland planting area shall utilize the following standards:

1) Required plant units per 100 feet of the perimeter of the excavated area shall be 3 canopy trees, 1 accent/understory tree and 5 shrubs.

2) The upland planting area shall be a minimum width of 20 feet.

3) Canopy trees for use within the buffer include:

Bald Cypress — Taxodium distichum

Gumbo Limbo — Bursera simaruba

Laurel Oak — Quercus laurifolia

Live Oak — Quercus virginiana

Sabal Palm — Sabal palmetto

Sea Grape — Coccoloba uvifera

Southern Slash Pine — Pinus elliottii var. densa

4) Understory trees for use within the buffer include:

Florida Privet — Forestiera segregate

Red Cedar — Juniperus virginiana

Silver Buttonwood — Conocarpus erectus var. sericeus

Simpson's Stopper — Myrcianthes fragrans

Stoppers — Eugenia spp. (natives only)

Wax Myrtle — Myrica cerifera

Wild Coffee — Psychotria undata

5) Shrubs for use within the buffer include:

Beautyberry — Callicarpa americana

Eastern Gammagrass — Tripsacum dactyloides

Fakahatchee Grass — Tripsacum dactyloides

Firebush — Hamelia patens

Firecracker Plant — Russelia equisetiformis

Florida Privet — Forestiera segregate

Saw Palmetto ————— Serenoa repens
Simpson's Stoppers ————— Myrcianthes fragrans
Wax Myrtle ————— Myrica cerifera and cvs.

- ~~6) In no case shall there be a separation of greater than 50 feet between trees.~~
~~7) Other indigenous species may be approved by the County for use in the upland planting area.~~
~~8) Clustering of vegetation may be allowed on a case-by-case basis.~~
~~9) All planted material shall be Florida #1 grade according to Florida Department of Agriculture and Consumer Services, Grades and Standards; trees shall be minimum three gallon size; shrubs shall be minimum one (1) gallon size, and minimum height of eighteen (18) inches.~~

e3. Reclamation plans shall be designed, signed and sealed by a Florida Registered Landscape Architect.

G. Reclamation Narrative.

~~This narrative shall describe how the site will be reclaimed upon completion of the earthmoving operation.~~

Comment [IW26]: Combined with F. above.

H.G. Environmental Surveys.

1. All environmental surveys shall have been completed within one year of application submittal.
2. Environmental surveys include:
 - a. FLUCCS map and report of all land covers and forms on the site according to FLUCCS category level 3 at scale of 1 inch equals 200 feet, unless a different scale is approved in writing by the Administrator in advance of application submittal.
 - b. A listed species survey performed in accordance with State or Federal survey guidelines.
 - c. A tree survey, including identification of all heritage trees.

H. Environmental Impact Statement.

An EIS is a written and graphic report that analyzes and illustrates the direct, indirect and cumulative impacts of an earthmoving operation upon vegetation, wildlife, wildlife habitat, endangered or threatened species, air quality, water quality, and other issues concerning the public's health, safety and welfare.

1. An EIS shall be prepared by individuals or firms that are qualified in the various disciplines involved in an EIS. The qualifications of every person involved in preparing the statement will be included along with portion(s) they were involved in.
2. The EIS shall include an analysis of the following:

- a. Integrated hydrologic modeling of surface water and groundwater resources, during natural, operating, and post-construction conditions in normal, wet, and drought scenarios, particularly:
 - 1) Stacking of water (including sheet flow) up gradient of the operation site, with particular attention paid to the effects of berms, ditches, or other water control structures.
 - 2) Potential loss of sheet flow or other surface flows down gradient of the operation site.
 - 3) Potential reductions in flows to creeks, streams, rivers, or other natural surface waters.
 - 4) The quality of any off-site surface water discharges which may occur under any conditions up to and including a 100-year storm event.
 - 5) The dimensions of land areas that will experience impacts from the lowering of groundwater levels due to dewatering or other aspects of the excavation.
 - 6) Impacts to the base flow of surface waters within the subject surface water drainage basin.
 - 7) Impacts to ground water resulting from increased evaporation from lakes and other post-mining landforms resulting from the excavation.
- b. Vegetation and wildlife, particularly:
 - 1) Impacts on-site and to adjacent natural communities.
 - 2) Impacts to, and mitigation proposed for, wildlife species that reside on or utilize the site, particularly those listed by the U.S. Fish and Wildlife Service or Florida Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern.
- c. Air quality, particularly:
 - 1) ~~Dust~~ Airborne debris from any excavation, blasting, stockpiling, sorting, vehicular circulation, or other activity.
 - 2) Any exhaust or other emissions from equipment associated with the excavation.
- d. Noise from any equipment, blasting, stockpiling, sorting, vehicular circulation, or other activity.
- e. Hazardous materials and other potential contaminants, including any naturally occurring elements, particularly radiation, that could become potentially harmful to the public if concentrated by any process associated with the proposed operation, such as dewatering, settling, stockpiling, and sorting.

3. All calculations, assumptions, survey methodologies, and other technical components of the studies will be documented.

4. The EIS shall include any other information required by the Administrator due to unique circumstances.

J. Hazardous Materials Assessment.

Assess the site for hazardous materials and other potential contaminants, including any naturally occurring elements, particularly radiation, that could become potentially harmful to the public if concentrated by any process associated with the proposed excavation.

K. Traffic Impact Analysis.

The methodology for this analysis will be prescribed by the County's Transportation Planner or County Engineer.

L. Landscape Plan.

~~A Landscape Plan shall depict the reclamation of the site subsequent to the completion of the earthmoving operation. All landscape plans shall be designed, signed and sealed by a Florida Registered Landscape Architect.~~

Comment [IW27]: Combined into C. and D. above

Section 3.5.469 Performance Assurance for Land Reclamation (PALR).

- A. The amount of the fee shall be calculated as required in the fee resolution adopted by the Board of County Commissioners.
- B. This shall be required of ~~Specific Major Earthmoving~~ Commercial Excavations operations and may be required for ~~Specific Minor other Earthmoving earthmoving~~ operations in a form acceptable to the County Attorney. The PALR shall remain in effect throughout the duration of the permit term, plus one year.
- C. It is the permit holder's and lot owner's responsibility to reclaim an earthmoving site prior to the expiration of a permit. Should this action not occur, the County will utilize the PALR to reclaim the site if no other satisfactory solution has been agreed upon with the permit holder or lot owner. If a PALR does not exist and the County must reclaim an earthmoving site, a lien shall be placed on the lot in an amount equal to that expended by the County to reclaim the site.

Section 3.5.470 Roadway Service Life Reduction Fee (RSLR).

- A. The amount of the fee shall be calculated as required in the fee resolution adopted by the Board of County Commissioners.
- B. The fee shall be submitted to the County in December of each year that the permit is in effect.
- C. This shall be required of ~~Specific Major Earthmoving~~ Commercial Excavations operations that meet the conditions of the resolution. The Roadway Service Life Reduction Fee shall remain in effect throughout the duration of the permit term.

1
2 **Section 3.5.471 Specific Earthmoving Permit Process and Procedures.**

3 **A. Pre-Application Meetings.**

4 A pre-application conference is mandatory for new applications and Major Modifications.

5 **B. Earthmoving Permit Review Process.**

6 1. ~~Specific Minor Earthmoving Operation~~ Lake Reconfiguration, Canal Excavation, RLE,
7 Stockpiling, and Clean Fill.

- 8 a. Applicants shall submit an application. An application shall ~~be void-expire~~
9 within one year of the date that it was ~~submitted~~ determined to be complete.

Comment [IW28]: Revised in response to public comment.

10 An extension of one year in total of the expiration date of the application
11 may be requested of the Administrator, provided:

- 12 1) The extension is requested at least ~~14-10 calendar-working~~ days prior
13 to the expiration date.
14 2) The applicant is able to demonstrate that the extension is required
15 because of a delay caused by permitting agencies and not to any fault
16 of the applicant.

Comment [IW29]: Revised in response to public comment.

- 17 b. The Administrator will review the application for completeness within five
18 working days of submittal and will notify the applicant of any deficiencies. If
19 the Administrator deems the application to be incomplete, all review of the
20 application shall cease until such time as the application is supplemented by
21 the applicant and deemed complete by the Administrator.

- 22 c. Once the Administrator has determined that the application is complete,
23 sufficiency review will begin. The application will be forwarded to other Staff
24 for their review.

- 25 d. Staff shall conduct their review and provide the Administrator a report
26 containing comments and recommendations concerning the content of the
27 application, whether it should be approved or not approved as submitted
28 and specific information needed or permit conditions deemed necessary to
29 comply with the provisions of this Article and other applicable law. Initial
30 staff review shall be completed within ~~three-60 working days~~ months of the
31 application being deemed complete.

- 32 e. Upon receipt of the aforementioned reports, the Administrator shall
33 determine whether further information is required from the applicant or a
34 decision of approval or denial can be made. Should it be determined that
35 more information is required, the applicant will be informed and all further
36 review of the application will cease until the information is received.

- 37 f. Once any requested information is received, the Administrator, and other
38 Staff as appropriate, will conduct further review. Any reviews subsequent to

the initial review shall occur within ~~two-40 working days~~^{months} of the submittal of new information and the applicant shall then be informed if the information adequately satisfies the issue in question.

- g. When the Administrator determines that no further information from the applicant is necessary and all Staff reviews have been finalized, the Administrator will prepare a letter to the applicant explaining the decision made, the reasons for the decision, and, if approved, any special conditions on the operation.

1) In the event the Administrator approves the application:

- a) The applicant shall satisfy any outstanding requirements.
- b) A permit shall be issued. The permit holder and the lot owner, if not the same, shall be held responsible for complying with all regulations and conditions of the permit and the Code of Laws and Ordinances of Charlotte County.
- c) The permit shall be posted at the site throughout the term of the activity.

2) In the event the Administrator does not approve the application the applicant may appeal the decision to a Hearing Examiner.

- h. Any amount of time taken to review an application above that time allocated for staff review in this subsection shall be applied to extend the expiration date of the application.

2. ~~Specific Major Earthmoving Operation~~Ag Excavations and Commercial Excavations.

- a. Applicants shall submit an application. An application shall ~~be void~~^{expire} within two years of the date that it was ~~submitted~~^{determined to be complete}. An extension for one year in total of the expiration date of the application may be requested of the Administrator, provided:

- 1) The extension is requested at least ~~60-20 calendar working~~ days prior to the expiration date.
- 2) The applicant is able to demonstrate that the extension is required because of a delay caused by permitting agencies and not to any fault of the applicant.

- b. The Administrator will review the application for completeness within ten working days and notify the applicant of any deficiencies. If the Administrator deems the application to be incomplete, all review of the application shall cease until such time as the application is supplemented by the applicant and deemed complete by the Administrator.

- c. Once the Administrator has determined that the application is complete, sufficiency review will begin. The application will be forwarded to other staff

Comment [IW30]: Revised in response to public comment.

Comment [IW31]: Revised in response to public comment.

1 for their review. Initial staff review shall be completed within ~~three months~~
2 ~~of the~~60 working days of when the application is deemed complete unless
3 review of the application by a consultant is necessary. If outside review of
4 the application is required, ~~one year~~120 working days may be allowed to
5 complete the initial review.

Comment [IW32]: Revised in response to public comment.

- 6 d. The applicant is responsible for providing the county with all necessary
7 information. The Administrator shall provide the applicant with written
8 notice or notices of insufficiencies with the application when the initial staff
9 review period is complete. The failure of the Administrator to mention
10 insufficiencies shall not affect the county's right to require that the
11 insufficiencies be addressed by the applicant when noticed.

- 12 1) Staff may cease review of the application until such time as an
13 identified insufficiency has been addressed by the applicant.
14 2) If the applicant submits information to address an insufficiency, the
15 County shall inform the applicant within ~~90~~60 working days if the
16 information is adequate to address the issue in question, unless such
17 information needs to be reviewed by a consultant. If a consultant
18 must review the information, ~~eight months~~120 working days will be
19 allowed for the review.

Comment [IW33]: Revised in response to public comment.

- 20 e. When the Administrator determines that the applicant has provided
21 information to address all issues identified during staff review, the
22 Administrator will finalize a Master Report, which shall include findings
23 related to consistency with the Comprehensive Plan, this Article, and the
24 Code of Laws and Ordinances of Charlotte County, and will provide an
25 approval or denial of the application.

- 26 1) In the event of an approval, the Administrator may require special
27 conditions to be placed on the operation.
28 a) The applicant shall satisfy any outstanding requirements.
29 b) A permit shall be issued. The permit holder and the lot owner,
30 if not the same, shall be responsible for complying with all
31 regulations and conditions of the permit and the Code of Laws
32 and Ordinances of Charlotte County.
33 c) The permit shall be posted at the site throughout the term of
34 the excavation.
35 2) In the event of a denial, the applicant may appeal the denial to a
36 Hearing Examiner. The applicant shall indicate the decision to appeal
37 the denial in writing to the Administrator within two months of the
38 date of the Master Report.

- 1 f. If staff review time exceeds that allocated in this subsection, the total
2 amount exceeded shall be applied to extend the expiration date of the
3 application.
4

5 **Section 3.5.472 Specific Earthmoving Permit Approvals.**

6 The Administrator shall decide if the application is consistent with the Comprehensive Plan, this Article,
7 and the Code of Laws and Ordinances of Charlotte County. The applicant has the burden of
8 establishing that all requirements have been met.
9

10 **Section 3.5.473 Specific Earthmoving Permit Appeal of a Decision.**

11 An applicant may appeal a decision of the Administrator to a Hearing Examiner.

- 12 A. If the Hearing Examiner determines that the applicant has not met the burden of proof that
13 the application does not meet the requirements of the Comprehensive Plan, this Article,
14 and the Code of Laws and Ordinances of Charlotte County, the application shall be denied
15 and such determination shall be deemed final. Decisions of the Hearing Examiner may be
16 appealed by filing a Petition for Certiorari in the Circuit Court of the Twentieth Judicial
17 Circuit in and for Charlotte County in accordance with the Florida Rules of Appellate
18 Procedure for the review of quasi-judicial decisions of a local government entity.
- 19 B. If the Hearing Examiner determines that the application does meet the requirements of the
20 Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County,
21 the application shall be approved and such determination shall be deemed final. In this
22 event:
- 23 1. The applicant shall satisfy any outstanding requirements.
 - 24 2. A permit shall be issued. The permit holder and the lot owner, if not the same, shall
25 be responsible for complying with all regulations and conditions of the permit and
26 the Code of Laws and Ordinances of Charlotte County.
 - 27 3. The permit shall be posted at the site throughout the term of the excavation.
28

Comment [IW34]: Revised in response to public comment.

29 **Section 3.5.474 ~~Earthmoving Permit Variances~~ to Earthmoving Standards.**

30 Variances to the standards may be requested for proposed operations. The request must be included
31 in the submitted application.

- 32 A. Variance requests for Standard Earthmoving operations, as well as Lake Reconfiguration,
33 Canal Excavation, RLE, Stockpiling and Clean Fill e-and-Specific Minor Earthmoving
34 operations shall be granted or denied by the Administrator.
- 35 B. Variance requests for Specific-Major-EarthmovingAg Excavations and Commercial
36 Excavations-operations shall be granted or denied by a Hearing Examiner.

1 C. As a condition to any requested Earthmoving Variance, the applicant shall establish the
2 following prerequisites to the satisfaction of the Administrator or Hearing Examiner before
3 granting of the Variance:

- 4 1. The variance requested is not contrary to the public interest or otherwise
5 detrimental to the public welfare.
- 6 2. Strict adherence to the provisions of the standards would place an undue burden or
7 hardship upon the operation due to unique conditions of the site and that hardship
8 was not caused intentionally by an action of the applicant.
- 9 3. The granting of a variance would not be injurious to or incompatible with contiguous
10 uses or to the surrounding neighborhood or to the environment and would not
11 allow relaxation of State or Federal regulations.
- 12 4. The hardship or conditions cannot reasonably be corrected or avoided by the
13 applicant, there is no reasonable alternative, and the requested variance is the
14 minimum modification of the standard at issue that will afford relief.

Comment [IW35]: Revised in response to public comment.

15 D. Expenses and other monetary considerations are not a basis for proving undue burden or
16 hardship.

17 E. The Administrator or Hearing Examiner may add such conditions as deemed necessary in
18 connection with the granting of any Earthmoving Variance.

19 F. The specifics of an approved Earthmoving Variance, along with any accompanying
20 conditions, shall be listed on the permit.

21 22 **Section 3.5.475 Earthmoving Permit Periods of Permit Validity.**

23 A. The term of a Standard Earthmoving Permit shall not exceed one year unless otherwise
24 stated on the permit.

25 B. The term of a Specific Earthmoving Permit shall commence upon the approval of the permit
26 by the Administrator, ~~or Hearing Examiner,~~ and will be valid for the following lengths of
27 time:

- 28 1. The term of ~~Specific Minor Earthmoving~~ Lake Reconfiguration, Canal Excavation, RLE,
29 Stockpiling and Clean Fill permits shall not exceed five years.
- 30 2. The term of ~~Specific Major Earthmoving~~ Ag Excavation and Commercial Excavation
31 permits shall not exceed 10 years.

32 33 **Section 3.5.476 Earthmoving Permit Modifications to Approved Permits.**

34 A. Modifications to an approved permit are approved or denied by the Administrator. In order
35 for any modification to be approved, the operation shall be in compliance with the
36 standards, requirements, and conditions under which the permit was issued and all State
37 and Federal permits shall be valid.

1 B1. Modifications to extend Extensions to the period of permit validity of an
2 Earthmoving Permit shall comply with the following:

3 1a. For a Standard Earthmoving permit as well as a Lake Reconfiguration, Canal
4 Excavation, RLE, Stockpiling or Clean Fill permit ~~Specific Minor Earthmoving~~
5 ~~permit~~, the request to extend the period of permit validity shall be submitted
6 at least 90-20 working calendar days prior to the permit expiration
7 date. Requests for extension subsequent to this timeframe shall not be
8 accepted. Permit extensions may be requested two times for two years each
9 for a total of four years. Further extensions shall not be permitted.

Comment [IW36]: Revised in response to public comment.

10 2b. For a conforming Ag Excavation or Commercial Excavation, ~~Specific Major~~
11 ~~Earthmoving permit~~, the request to extend the period of permit validity shall
12 be submitted at least 150-40 calendar working days prior to the permit
13 expiration date. Requests for extension subsequent to this timeframe shall
14 not be accepted. Permit extensions for Specific Major Earthmoving ~~these~~
15 permits may be requested in ten year increments.

Comment [IW37]: Revised in response to public comment.

16 3c. Once a permit extension is granted, any new fees adopted by the Board prior
17 to the renewal of the permit shall be complied with.

18 4d. The Administrator is not obligated to approve an extension if it is determined
19 that conditions within the vicinity of the earthmoving operation have
20 changed since the initial approval and the continuing operation of the
21 earthmoving operation would be detrimental.

22 CB. If a modification application is not approved within one year of the submittal date, it shall
23 be considered void.

24 DC. A denial of a modification request may be appealed to a Hearing Examiner.

25
26 **Section 3.5.477 Earthmoving Permit Inspections.**

27 A. The Administrator, or designee, shall have the right to inspect the lands affected under this
28 Article. This right shall extend to lands already permitted to ensure compliance with this
29 Article and all conditions of the permit, as well as those lands where the applicant has
30 submitted an application for the issuance of a permit under this Article.

31 B. Inspections of permitted activities shall be performed at least annually. An inspector shall
32 attempt to give at least 72 hours' advance notice and upon arrival the inspector shall
33 attempt to contact operating personnel. Inspections needed in response to a complaint
34 require no advance notice.

35 C. A copy of all required local, State and Federal permits and reports must be available for
36 inspection on site at all times.

37 D. A copy of the site plan must be available for inspection on site at all times.
38

Section 3.5.478 Specific Earthmoving Permit Annual Report.

- A.** An annual report shall be submitted to the Administrator for each Specific Earthmoving Permit in the manner as required in the County's reporting form.
- B.** The annual report shall be submitted, including any applicable fees, on or before December 31 of each calendar year following the permit issuance date and shall include all activity through October 1 of that calendar year. For permits issued on or after October 1 of any calendar year, the Applicant may submit the first annual report on the second December 31 following the permit issuance and on December 31 of each calendar year thereafter.
- C.** Failure to file the required annual report shall be grounds for suspension of the activity authorized by the permit; however, an extension of time for filing may be granted by the Administrator for reasonable cause upon a written request received by the Administrator prior to the date that the report is due.

Section 3.5.479 Earthmoving Permit Monitoring Reports

Copies of all reports required by State or Federal agencies shall also be simultaneously submitted to the Administrator.

Section 3.5.480 Earthmoving Permit Violations

- A.** Any person with any property interest in an earthmoving site as well as the permittee shall be responsible for any violation of this Article.
- B.** It is unlawful for any person to violate or fail to comply with the provisions of this Article, any provisions adopted by reference herein, and of a permit issued pursuant to this Article. If at any time during the term of a permit, the Administrator finds that the provisions of an Earthmoving Permit, this Article, or other applicable law have been violated, the Administrator may issue a stop work order and, if necessary, initiate a violation of the provisions of this Article before the Code Enforcement Board. The stop work order shall remain in effect until the activity is brought into compliance with the permit.
- C.** The validity of a permit shall terminate if there is evidence that the permit is being used for or the land is being prepared for a use other than what was stated in the application, or otherwise lawfully approved by the County. Such evidence may include submittal of an application for a building permit, a special exception, a rezone, a site plan, or similar item.
- D.** If an earthmoving operation occurs without an approved, required permit, the violator(s) shall be required to pay quadruple the regular fee for the application appropriate for that activity, in addition to any code violation fees. The County reserves the right to deny the application and require the lot owner to restore the lot to its previous condition.

Comment [IW38]: Revised in response to public comment.

1 *Agriculture* means the science and art of production of plants and animals useful to humans,
2 including to a variable extent the preparation of these products for human use and their disposal by
3 marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy,
4 livestock, poultry, bees, and any and all forms of farm products and farm production.

5 *Confining layer* means the impermeable stratum confining an aquifer.

6 *Cumulative or cumulative impact* means the total impact that results from a proposed earthmoving
7 operation when added to the impacts of other past, present, and reasonably foreseeable commercial
8 or residential development activity.

9 *Depth* means the vertical distance between existing grade and the bottom of an excavation.

10 *Ditch* means a linear trench not exceeding 7 feet in depth as measured from natural grade and 20
11 feet in width.

12 *Dwelling unit* means a structure or portion thereof that is used exclusively for human habitation
13 including living, cooking, and sanitary facilities.

14 *Earthmoving* means any and all activities resulting in the repositioning of earth and the
15 transporting and installing of earth.

16 *Engineer* means a professional engineer registered and certified to practice in the State of Florida
17 who is retained by the permittee, or an agent of the permittee.

18 *Excavation* means the removal of earth, an all-inclusive term, below the existing grade.

19 *Excavation footprint* means the area that is to be excavated up to top of bank.

20 *Fee resolution* means a resolution passed by the Board of County Commissioners that sets forth
21 fees, bond amounts, performance assurance requirements and other amounts payable by an applicant
22 and permittee.

23 *Fill* means the manmade installation or deposition of deposits of earth, sand, gravel, shell or other
24 approved materials to increase the vertical or horizontal extent of land.

25 *Filling* means the act of placing fill on land.

26 *Grading* means leveling, smoothing, and reshaping the ground surface to a level base or specified
27 slope, such as for construction work for a building foundation, the base course for a road, landscape
28 and garden improvements, or surface drainage.

29 *Haul route* means paved or unpaved roads within and outside the site that the permit specifies can
30 be utilized to transport materials to an on-site or off-site destination. The terminus of the haul route
31 shall be the nearest state maintained road.

32 *Lake* means a body of standing water occupying a natural basin or manmade depression in the
33 earth's surface. The term does not include stormwater ponds.

34 *Littoral zone or shelf* means the near shore area of a water body where sunlight penetrates all the
35 way to the sediment and allows aquatic plants to grow.

36 *Lot* means a designated parcel, tract, or area of land established by plat, subdivision, or as
37 otherwise permitted by law, and recorded in the public records of Charlotte County, Florida, to be
38 separately owned, used, developed, or built upon. For the purpose of this Article, a lot is created on

1 such date that a deed for the lot is lawfully first recorded in the public records of the County or the
2 date that a plat has been lawfully recorded in the public records of the County and the lot is a part of
3 the plat.

4 *Lot owner* means a person or persons who own the land that is the subject of the earthmoving
5 activity.

6 *Maintenance dredging* means the excavation of sediments or other materials from presently
7 existing and functional channels, ditches, canals, lakes, impoundments or other waterways of artificial
8 construction to original design elevations.

9 *Natural grade* shall have two meanings depending on the condition of the lot. *Natural grade for a*
10 *lot developed with a structure where fill was required in order to raise the lot elevation is the grade of*
11 *the lot after the construction is complete. Natural grade for all other lots* means the elevation of the
12 original or undisturbed natural surface of the ground as of 1980.

Comment [IW39]: Revised in response to public comment.

13 *PALR* means Performance Assurance for Land Reclamation

14 *Site* means the portion of a lot that is used for any activity associated with an earthmoving
15 operation.

16 *Sediment barrier* shall mean a physical barrier through which water readily passes and that
17 functions to trap or prevent the passage of sediments suspended within the transmitted water.

18 *Topsoil* shall mean those soils classified as the upper part of the soil which are the most favorable
19 material for plant growth, ordinarily rich in organic matter, and are used to top dress roads, lawns, and
20 land affected by mining or development.